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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re JUAN P., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN P.,

Defendant and Appellant.

A153067

A153968

(Napa County
Super. Ct. No. JV18443)

Before us are two consolidated appeals by Juan P., a minor, stemming from a drug deal turned robbery on the evening of December 9, 2016. First, in case No. A153067, Juan appeals jurisdictional and dispositional orders declaring him to be a ward of the court and placing him on probation for having committed the felony offenses of assault with a deadly weapon and assault by means of force likely to produce great bodily injury, and the misdemeanor offense of battery. Second, in case No. A153968 he appeals the denial of a motion for return of property. As to both appeals we affirm.¹

¹ In case No. A153968, Juan filed a request that this court take judicial notice of the record in case No. A153067. Juan's unopposed motion to consolidate appeals Nos. A153067 and A153968 was granted on September 13, 2018. Since the two appeals are now consolidated, we deny the request for judicial notice as moot.

I. BACKGROUND

Ryan J. agreed to meet Luis M. to sell him marijuana on the night of December 9, 2016. The two did not know each other and had no previous dealings. They met to consummate the transaction sometime between 8:45 p.m. and 10:00 p.m. at a nearby elementary school. Ryan had driven to the school with his girlfriend, Shalean T. Luis arrived at the school with two companions, Ramses D. and Juan, the defendant and appellant here.

As Ryan and Shalean were waiting in the car, Luis approached the vehicle and attempted to get in to execute the marijuana transaction while Juan and Ramses stood nearby outside the vehicle. When Luis tried to get into the car, Ryan suggested that he and Luis take a walk to the park across the street instead to carry out the transaction. Shalean waited in the car while Ryan and Luis walked to complete the drug deal. As Ryan and Luis reached the sidewalk on the adjacent side of the street, Ryan handed Luis a bag of marijuana and Luis handed Ryan a wad of cash which turned out to be five or six dollar bills—far short of the \$400 agreed on.

A rapid and chaotic escalation of events followed. After the exchange, while Ryan and Luis were side by side on the sidewalk, Ryan noticed Juan and Ramses walking towards him and Luis. Ramses brandished a knife and told Ryan to “step back” or “back up” while, at the same time, Luis began walking away. When Ramses brandished the weapon Juan was right next to him. In the melee, Juan punched Ryan in the side of the head before he, Ramses, and Luis all began to run away.

From her vantage point inside the car, Shalean observed a fight break out among the four males. She quickly rushed to aid Ryan. As Luis attempted to flee, Shalean tackled him and restrained his legs so he could not move or get away. Shalean was trying to help Ryan get the marijuana back. Ryan made his way over to where Shalean was struggling with Luis on the ground. Meanwhile, Juan and Ramses made their way over to the struggle as well to attempt to help Luis get away.

While Shalean and Luis tussled, Ramses and Juan took turns punching Ryan as he attempted to aid Shalean. Both Juan and Ramses repeatedly punched Ryan in the head.

When he was not punching Ryan, Juan kicked Shalean multiple times while she was on the ground in an attempt to help free Luis. In the scrum, while Shalean was on the ground with Luis, and Juan and Ramses were punching Ryan by turns, Luis handed a large knife up to Ramses.

At that point, Juan was within a few feet of Ramses, close enough to see him take the knife from Luis. Ryan also had a small knife, but he dropped it during his attempts to fight off Ramses and Juan. While on the ground tussling with Luis, Shalean was punched in the face and knocked unconscious, apparently by Luis, as Ramses and Juan continued to beat up Ryan. Shalean was also trampled by Juan and Ramses while she was on the ground struggling with Luis.

Ramses stabbed Ryan three times during the altercation—once in the thigh, once in the side, and once in the back. Ryan suffered a collapsed lung as a result of at least one of the stab wounds to his upper torso. Ryan remained in the hospital for five days, and recovery from the collapsed lung took several months.

The prosecution charged Juan in a wardship petition pursuant to Welfare and Institutions Code section 602 with: count one, assault with a deadly weapon, a felony under Penal Code² section 245, subdivision (a)(1), for the stabbing of Ryan in the lung; counts two and three, assault by means of force likely to produce great bodily injury, a felony under section 245, subdivision (a)(4), for the stabbing of Ryan in the leg and for a punch Shalean sustained to the face, respectively; count four, dissuading a witness from reporting a crime, a felony under section 136.1, subdivision (b)(1); count five, accessory after the fact, a felony under section 32; and count six, simple battery, a misdemeanor under sections 242 and 243, subdivision (a) (a lesser included charge to count three).

The juvenile court found that Juan had aided and abetted in the target crime of the attempted robbery or robbery of the marijuana. As such, the petition was sustained against Juan as an aider and abettor on counts one, two, and six under the natural and probable consequences theory of liability. The court sustained the petition against Juan

² All statutory references are to the Penal Code unless otherwise noted.

for counts four and five under a theory of direct liability. The court did not find Juan liable for count three. Juan was declared a ward of the juvenile court, ordered to spend 80 days in Juvenile Hall, and placed on formal probation.

As to counts one, two, and six, Juan appeals the decision of the juvenile court.

II. DISCUSSION

A. Juan’s Appeals of Counts One, Two, and Six

1. *Legal Principles and Standard of Review*

Juan argues the record below lacks sufficient evidence for the juvenile court to have sustained the wardship petition on counts one, two, and six. When considering such an appeal this court reviews “the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) “The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction.” (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.)

An accomplice “who aids and abets the commission of a crime is a ‘principal’ in the crime, and thus shares the guilt of the actual perpetrator.” (*People v. Prettyman* (1996) 14 Cal.4th 248, 259 (*Prettyman*); § 31.) To be held directly responsible for the crimes in question as an aider and abettor, the record must contain substantial evidence from which a reasonable trier of fact could find that Juan, “ ‘with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aid[ed], promote[d], encourage[d] or instigate[d], the commission of the crime.’ ” (*Prettyman, supra*, 14 Cal.4th at p. 259, quoting *People v. Beeman* (1984) 35 Cal.3d 547, 561.)

An aider and abettor is liable “not only for the crime he or she intended to aid and abet (the target crime), but also for any other crime that is the ‘natural and probable consequence’ of the target crime”—“ ‘criminal harms [he or she has] naturally, probably and foreseeably put in motion.’ ” (*Prettyman, supra*, 14 Cal.4th at pp. 260–261.) As the

court established in *People v. Croy* (1985) 41 Cal.3d 1, “a defendant whose liability is predicated on his status as an aider and abettor need not have intended to encourage or facilitate the particular offense ultimately committed by the perpetrator. His knowledge that an act which is criminal was intended, and his action taken with the intent that the act be encouraged or facilitated, are sufficient to impose liability on him for any reasonably foreseeable offense committed as a consequence by the perpetrator. It is the intent to encourage and bring about conduct that is criminal, not the specific intent that is an element of the target offense, which . . . must be found by the [trier of fact].” (*Id.* at p. 12, fn. 5.)

Beyond the three conditions that must be shown to establish that Juan aided and abetted the target crime, to hold him liable under the natural and probable consequences theory the record must also contain substantial evidence establishing that: “[(1)] the defendant’s confederate committed an offense other than the target crime; and [(2)] the offense committed by the confederate was a natural and probable consequence of the target crime that the defendant aided and abetted.” (*Prettyman, supra*, 14 Cal.4th at p. 262.)

2. Assault Charges in Counts One and Two

The juvenile court correctly concluded there was sufficiently substantial evidence in the record to find Juan guilty of the target crime of “tricking or robbing” Ryan as an aider and abettor. As the juvenile court explained, a reasonable trier of fact could find beyond a reasonable doubt that Juan “did know why all the persons involved were at the park, and also that he knew the amount [of marijuana] that was being sold, and that no one had sufficient money to buy that amount. Otherwise, the Court would have to find that the minor simply accompanied his friends, without knowing of any purpose, to the park on this heavily raining night and that no one discussed what was to occur. . . . [Juan’s] ignorance of the anticipated taking is simply not imaginable.”

Moreover, even if the events had not been pre-orchestrated among Juan, Luis, and Ramses, once Ramses and Juan approached Luis and Ryan on the sidewalk and Ramses brandished his knife and ordered Ryan to step away, it would have been clear to Juan that

a robbery was occurring and any action taken by him in furtherance of that robbery made him liable as an aider and abettor. The defense argues, citing *People v. Allen* (1985) 165 Cal.App.3d 616, 625, that Juan's mere presence at the scene, "even if combined with knowledge that the crime is being committed, does not amount to aiding and abetting." This argument fails because Juan was standing right next to Ramses when Ramses pulled out the knife and commanded that Ryan step away. Substantial evidence supports the inference that Juan saw the knife and heard the command.

Juan's further action of punching Ryan in the head took him out of the realm of mere presence at the scene and it establishes Juan aided and abetted by acting " 'with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice [to] aid[], promote[], encourage[] or instigate[], the commission of the crime.' " (*Prettyman, supra*, 14 Cal.4th at p. 259, quoting *People v. Beeman, supra*, 35 Cal.3d at p. 561.) The defense's argument that Juan's mere failure to take steps to prevent the crime "does not constitute aiding and abetting" likewise fails. Juan not only failed to take steps to stop the crime from occurring, he actively took steps to promote the occurrence of the target offense by throwing the first punch at Ryan's head and then further attacking Ryan to prevent him from helping Shalean as she struggled on the ground with Luis.

Having established that Juan aided and abetted in the target crime, he is liable for "any other crime that [was] the 'natural and probable consequence' of the target crime." (*Prettyman, supra*, 14 Cal.4th at p. 261.) We agree with the juvenile court that "it is impossible to believe that [Juan] did not know that they were going to get the marijuana by trick or robbing the seller, and a reasonable person would conclude that the probable and natural consequences of such an endeavor is that it might end in violence." This is particularly true of this specific drug transaction where the parties had no prior dealings with one another and would have been on heightened alert to mischievous dealings by the other party.

The juvenile court sustained the petition against Juan in count one for stabbing Ryan in the lung and in count two for stabbing Ryan in the leg under the theory that Juan

directly aided and abetted in the stabbings by continuing to assault Ryan as the stabbings occurred. The court reasoned that Juan “must have seen that the other young person who stabbed the victim had a knife, since they were next to each other while the knife was evident and being used, and also that [Juan] struck the victim with his fists while his companion stabbed the victim.” There is sufficiently substantial evidence in the record from which a reasonable trier of fact could find these facts to be true. Likewise for count two. Starting from the point when Ramses initially pulled his knife out on the sidewalk, while Juan was right next to him, and demanded Ryan step away, it was undeniably foreseeable that Ramses might stab someone during an ensuing altercation. Thus, for both counts one and two, we conclude that Juan is liable as an aider and abettor under a direct theory and under the natural and probable consequences theory.

3. *Battery Charge in Count Six*

At some point during the altercation Ryan positioned himself such that Shalean and Luis were struggling on the ground between him and the Juan and Ramses duo. As Juan and Ramses stomped over Shalean to attempt to continue beating on Ryan, Luis punched Shalean in the face causing her a bloody nose and a loss of consciousness. Count six charges Juan as an aider and abettor with misdemeanor battery for the punch to the face sustained by Shalean which knocked her unconscious.

“A battery is any willful and unlawful use of force or violence upon the person of another.” (Pen. Code, § 242; see also *In re B.L.* (2015) 239 Cal.App.4th 1491, 1495.) The force necessary to support a battery conviction need not be extreme or even cause bodily injury or pain; “ ‘ “[a]ny harmful or offensive touching” ’ ” will satisfy the requirement. (*In re B.L., supra*, 239 Cal.App.4th at p. 1495.) Viewing the record in the light most favorable to the judgment, we find there is substantial evidence in the record to support the battery finding here.

As noted above, and as the juvenile court correctly concluded, all of the violence here was a natural and probable consequence of the target crime of robbery. To be guilty of the battery under the natural and probable consequences theory it is not required that Juan actually threw the blow that knocked Shalean unconscious—in fact, it is not even

required that Juan was in the vicinity when the punch to the face occurred. All that is required is that the crime was a natural and probable consequence of the target crime. When Shalean was knocked unconscious by Luis, Juan was still actively participating and assisting Ramses in the altercation with Ryan. The punch to Shalean's face was not only a natural and probable consequence, it was foreseeable and likely under the circumstances.

The initial altercation between Ryan, Juan, and Ramses stemmed from the target crime. The resulting punch to Shalean's face was incidental to the target crime as well because it stemmed from that initial altercation between Ryan, Juan, and Ramses which was triggered by the robbery. Furthermore, Juan battered Shalean when he “ ‘stomped over’ ” her legs and back as he and Ramses continued to assault Ryan. According to the record, when Ramses was taking his turn beating on Ryan, Juan also kicked Shalean a number of times in the torso in an attempt to cause her to lose her hold on Luis. The evidence here provides sufficient grounds for a reasonable trier of fact to find Juan guilty beyond a reasonable doubt of battery upon Shalean as an aider and abettor under the natural and probable consequences theory and under a direct theory of liability. The adjudication must stand.

B. Appeal of Denial of Motion to Return Property

During the altercation discussed above Juan lost his glasses. While searching the park for evidence officers found a pair of prescription Gucci glasses along with a bag of marijuana, two knives, and a wad of bills in the grass. Juan subsequently filed a motion for the return of those glasses. After a hearing on the motion it was denied.

We review the denial of Juan's motion for return of property for abuse of discretion. (See *Buker v. Superior Court* (1972) 25 Cal.App.3d 1085, 1090 [concluding that the denial of a motion for return of property in that case “constituted an abuse of discretion as a matter of law”].) Per section 1417, “[a]ll exhibits which have been introduced or filed in any criminal action or proceeding *shall be retained* by the clerk of the court . . . *until final determination of the action or proceedings* and the exhibits shall thereafter be distributed or disposed of as provided in this chapter.” (Italics added.) It is,

however, within the court’s discretion to return property “prior to the final determination of the action upon stipulation of the parties or upon notice and motion, *if no prejudice will be suffered by either party* and a complete photographic record is made of the released exhibit.” (*People v. Lamonte* (1997) 53 Cal.App.4th 544, 549, italics added; § 1417.2.)³

Although defense counsel was willing to stipulate that the glasses were Juan’s and provide photographs of the glasses, the prosecution was unwilling to accept that stipulation and argued that the glasses themselves were crucial pieces of evidence tying Juan to the scene and were critical in the victim’s ability to identify Juan. The prosecution argued that photographs would not serve those purposes sufficiently.

The prosecution is not required to stipulate or make arrangements for the return of Juan’s glasses if it could prejudice its case. (*Lamonte, supra*, 53 Cal.App.4th at p. 549; § 1417.2.) Ryan had been unable to identify Juan without the glasses when Juan was brought to the hospital and shown to Ryan by the police. Photographs of the glasses would not serve the same identification purposes for the prosecution. Furthermore, the glasses are a crucial piece of evidence tying Juan to the scene of the crime and chain of custody of that physical evidence must be maintained to insure the glasses’ authenticity and usefulness to the prosecution in the event of a retrial. The prosecution’s case stands to be prejudiced by the return of the glasses. Therefore, the juvenile court did not abuse its discretion by denying Juan’s motion for the return of the glasses until the case has been ultimately resolved.

³ Section 1417.2 provides that, “[n]otwithstanding Section 1417.5, *the court may*, on application of the party entitled thereto or an agent designated in writing by the owner, order an exhibit delivered to that party at any time prior to the final determination of the action or proceeding, upon stipulation of the parties or upon notice and motion if both of the following requirements are met: [¶] (a) No prejudice will be suffered by either party. [¶] (b) A full and complete photographic record is made of the exhibits so released. [¶] The party to whom the exhibit is being returned shall provide the photographic record. This section shall not apply to any material, the release of which is prohibited by Section 1417.6.” (Italics added.)

III. DISPOSITION

The jurisdictional and dispositional orders, and the order denying Juan's return of property motion, are affirmed.

STREETER, J.

WE CONCUR:

POLLAK, P.J.

BROWN, J.

A153067 & A153968